IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

RP.No. 609 of 2006(A)

AGAINST THE JUDGEMENT/ORDER IN IN AP.71/2004 Dated 22/11/2005

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REVIEW PETITIONER/PETITIONER:

M/S.KALLAI SAW MILLS & TIMBER INDUSTRIES
KONTHURUTHY ROAD, THEVARA,
ERNAKULAM, KOCHI-682 018.

BY ADV. SRI.M.R.NANDAKUMAR
SRI.T.K.RAJESHKUMAR

RESPONDENTS: OPPOSITE PARTY:

THE REGIONAL DIRECTOR
ESI CORPORATION, PACHADEEP BHAVAN,
SWARAJ ROUND NORTH, THRISSUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

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R.P. No. 609/2006 in Ins.Appeal 71/2004

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Dated this the 4th day of December, 2006

O R D E R

The respondent in Insurance Appeal No.71/2004 is the review petitioner. The main contention raised by the learned counsel for the review petitioner is that four employees, Venugopal T.V., Sukumaran T.K., Kurian K.E and Unnikrishnan, were covered under the E.S.I scheme, while they were employed in M/s. Bharat Kumar Patel and Co., Thripunithura. Hence, it is prayed that the review petitioner is not bound to pay the share of the E.S.I contribution of the above employees, as reported by DW.1, in his inspection report.

2. I have heard in detail, the submissions made by the counsel for the review petitioner as well as the counsel for the respondent, appellant. Relying on paragraph '3' of the review petition, counsel brought to my notice that Unnikrishnan was covered under the E.S.I Scheme even while he was working under M/s. Bharat Kumar Patel and Co., Thripunithura. Therefore, there cannot be any second coverage. However, the learned counsel

could not place before me any materials to show that the other employees were covered under the insurance scheme, while they were working under M/s. Bharat Kumar Patel and Co., Thripunithura.

3. In paragraph '6', of my judgment, I have discussed clearly, relying on **E.S.I Corporation vs.Hotel Amred** (1998 (1) KLT 786) that:-

> "a person who comes to the Court with a grievance has a duty to establish his case by leading evidence, oral and documentary, and substantiate his claim, as per Section 102 of the Evidence Act. There is nothing on record to show that P.Rajan has supplied the four employees mentioned in Ext.D3 report of DW.1. Therefore, I am not inclined to accept that the four employees who were doing the work in the establishment, under the direct supervision of the applicant, were not their employees, that they were the workers of Bharat Kumar Patel and Co., Tripunithura, and that they were deputed for the purpose of doing the work of that company in the premises of the applicant."

4. It is relying on Hotel Amreds case that I had held that all the four employees, who were claimed to have been supplied by P.Rajan, who is an immediate employer, are the employees of the applicant establishment. Therefore, the establishment was found squarely fall within the E.S.I coverage, as discussed in paragraph 10

of my judgment.

5. The matter was remanded to the E.S.I Court. The learned counsel submits that though there was a time bound direction, because of the review petition, the matter is even now pending.

6. Therefore, I direct the E.S.I court to consider whether Unnikrishnan was covered under the E.S.I scheme, while he was working with M/s. Bharat Kumar Patel and Co., Thripunithura. Even in such situation, as 10 or more employees are covered under the E.S.I Scheme, I have nothing to review in my judgment. However, if Unnikrishnan is found, having covered, while he was working with M/s. Bharat Kumar Patel and Co., Thripunithura, the E.S.I court shall specify the same and, in such event, the review petitioner establishment need not pay the E.S.I contribution for that employee, for that period.

The review petition is closed as above.

(J.M.JAMES)
Judge

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